

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Access Charge Reform)

Price Cap Performance Review)
for Local Exchange Carriers)

CC Docket No. 96-262

CC Docket No. 94-1

PETITION FOR RECONSIDERATION

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SUMMARY

The X-Factor produces a number that, by definition, constitutes an estimate of total LEC productivity. The Commission's amendments to price cap rules adopted in the *CALLS Order* that use that number to adjust price cap limits to achieve purposes unrelated to productivity are inherently arbitrary and unlawful. This arbitrary use of productivity estimates to adjust capped rates, based on essentially nothing more than that some ILECs have proposed it, voids the previous assumption underpinning price caps that rates conforming to the price cap formula are reasonable. The *CALLS Order* also impermissibly permits ILECs to use the X-Factor to make competitive rate reductions while preserving revenues in areas less subject to competition. The *CALLS Order* fails to adequately evaluate benefits of alternative targeting assuming that the Commission could lawfully apply X-Factor reductions for purposes unrelated to productivity. In addition, the *CALLS Order* erroneously assumes that targeting of X-Factor reductions to local switching is acceptable because ILECs might be able to make such reductions through adequately supported voluntary tariff filings. To the contrary, amendments to the Commission's price cap rules must be consistent with the price cap scheme and must rest on more than the fact that ILECs have proposed them.

The Commission should promptly rescind the *CALLS Order* and direct carriers to set rates as would be determined under previous rules or pursuant to a revised CALLS plan that remedies the arbitrary and unlawful aspects of the plan that the Commission has adopted.

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PETITION FOR RECONSIDERATION

The Association for Local Telecommunications Services (“ALTS”) and Focal Communications Corporation (“Focal”) (collectively “Petitioners”) submit this Petition For Reconsideration of the *CALLS Order*.³ ALTS is the leading national industry association whose mission is to promote facilities-based local telecommunications competition. Created in 1987, ALTS has offices in Washington, DC and Irvine, California and represents more than 200 companies that build, own, and operate competitive local networks. Focal is a rapidly growing facilities-based communications provider offering innovative data and voice services to large corporations, value-added resellers and Internet service providers in major markets nationwide.

³ Access Charge Reform, CC Docket No. 96-262, Sixth Report and Order, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Sixth Report and Order, Low-Volume Long-Distance Users, CC Docket No. 99-249, Order, and Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Eleventh Report and Order, FCC No. 00-193 (rel. May 31, 2000), as corrected by Errata (released June 14, 2000), *petition for review filed sub. nom. US West v. FCC*, No. 00-1279 (D.C. Cir filed June 27, 2000), *stay denied, Order*, FCC 00-249, released July 14, 2000 (“*CALLS Order*”).

I. INTRODUCTION

The Commission in the *CALLS Order* has substantially abandoned price cap regulation as a way for defining reasonable ILEC rates. The use of estimates of LEC productivity for purposes unrelated to productivity, the substantial discretion given to price cap ILECs as to where they will apply productivity reductions, and the arbitrarily selected universal service fund, among other features of the Coalition for Affordable Local and Long Distance Service (“CALLS”) plan, vitiates the key assumption previously underlying price cap regulation that the price cap formula defines reasonable rates. The Commission’s rush to achieve lower switched access charges and achieve a possible marketplace solution to access reform issues based on industry negotiations, even though negotiations did not include all industry groups, and its desire to avoid contentious and difficult X-Factor remand issues, have led it to adopt arbitrary and unlawful amendments to the price cap rules. The Commission should promptly rescind the *CALLS Order*.

II. TARGETING OF X-FACTOR REDUCTIONS TO LOCAL SWITCHING IS ARBITRARY AND UNLAWFUL

A. X-Factor Reductions May Not Be Used for Purposes Other Than to Adjust Rates to Reflect ILEC Productivity

In the *CALLS Order*, the Commission candidly admits that the application of X-Factor reductions to price cap baskets under the CALLS proposal has nothing to do with productivity.⁴ However, the total dollar amount of price cap reductions calculated under the X-Factor and price cap formulas is an estimate of the total LEC productivity - and nothing else. As pointed out by

⁴ *CALLS Order*, para. 160.

Petitioners in this proceeding,⁵ the X-Factor embodies the Commission's assessment of the extent to which the productivity of the LEC industry as a whole has, in the past, exceeded the productivity of the general economy.⁶ The Commission has determined that use of an industry-wide average productivity factor is consistent with the goal of creating price regulation that replicates the incentives provided by competition.⁷ The Commission has consistently based the X-Factor on an industry-wide assessment of productivity. It did so when it initially developed the X-Factor in 1990, when it represeted the X-Factor in the 1995 *LEC Price Cap Performance Review Order*,⁸ and when it set the X-Factor at 6.5% in 1997.⁹ The Commission has proposed to maintain that approach in current X-Factor proceedings on remand from the DC Circuit.¹⁰ Since X-Factor reductions are, by definition, an estimate of ILEC productivity as a whole, the Commission in adopting the CALLS plan has adjusted switched access rates by a number that

⁵ Focal Comments, filed April 3, 2000, p. 5.

⁶ *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) ("*LEC Price Cap Order*"); *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, 10 FCC Rcd 8961, 9027 ("*Price Cap Performance Review Order*").

⁷ *Price Cap Performance Review Order*, 10 FCC Rcd 9027.

⁸ *Id.*

⁹ *Price Cap Performance Review for Local Exchange Carriers, Fourth Report and Order*, CC Docket No. 94-1, 12 FCC Rcd 16642 (1997) (basing revised X-Factor on Total Factor Productivity (TFP), a methodology used to measure productivity and productivity growth in the economy as a whole).

¹⁰ *USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999); *Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 94-1; *Access Charge Reform*, CC Docket No. 96-262, Further Notice of Proposed Rulemaking, FCC 99-345, released November 15, 1999, para 7 ("*X-Factor Remand NPRM*").

may not validly be applied solely to switching since that number does not define productivity for that basket. The CALLS plan is arbitrary and unlawful because it does so.

Nor does the goal of reducing switched access charges justify the proposed targeting, as the Commission states.¹¹ This is a classic instance of a results-oriented approach that does not make the Commission's arbitrary use of productivity adjustments any less so. Instead, if the Commission wants to adjust switching rates for reasons other than productivity, it must use alternatives directly looking toward that result that it has available to it. The Commission could require ILECs to reduce those charges to forward looking costs based on cost studies as it has chosen to do for price cap ILECs that choose not to opt into the CALLS plan. If the Commission wants to reduce rates-of-return for certain baskets, the Commission may conduct a proceeding to introduce a rate-of-return component into the price cap formula. In addition, price cap ILECs may voluntarily reduce switched access charges merely by filing a tariff to do so. All of these approaches would permit the Commission to achieve its goals without misuse of the X-Factor in ways that are inherently arbitrary. For that reason, the Commission may not misuse the X-Factor to achieve the goal of reducing switched access charges.

B. Misuse of the X-Factor Vitiates Price Cap Regulation

While it is inherently arbitrary for the Commission to use its carefully crafted measure of ILEC productivity for purposes other than productivity, this misuse also vitiates the presumption under price cap rules that rates derived under the price cap formula are reasonable. Prior to adoption of the CALLS proposal, the price cap scheme defined ILECs' reasonable and lawful rates based on the fact that initial price caps were set at the then-existing level of rates under rate-

¹¹ *CALLS Order*, para. 161.

of-return regulation, and then have been subsequently adjusted based on various factors under the price cap formula that carefully defined the rates that ILECs may charge.¹² One of these price cap adjustments was the X Factor. Rates that conform to the price cap scheme are presumed reasonable,¹³ and as long as the X-Factor was employed in a way that was consistent with what the X-Factor is - a measure of ILEC productivity - the presumption of reasonableness of price capped rates is maintained.

However, the application of the X-Factor that the Commission has now adopted under the CALLS proposal vitiates any presumption that the resulting price caps are reasonable because that application has nothing to do with LEC productivity. In essence, by targeting X-Factor reductions to switching, the Commission has adjusted price capped rates by a number that has no validity for that adjustment because it measures LEC productivity as a whole, not productivity in switching. Nor is there any other basis in the record for applying this number to switching other than the fact that ILECs have proposed it. Accordingly, the application of the X-Factor that the Commission has adopted is unlawful because it eliminates the key presumption of lawfulness of price cap rates that has been the underpinning of the price cap scheme.

C. Previous Targeting to the TIC Does Not Justify CALLS Targeting

The Commission's argument that it has previously targeted reductions to certain baskets, and that this justifies the CALLS proposal, is unconvincing. The "g factor" reductions to common line cited by the Commission¹⁴ were intended to require ILECs to share with consumers

¹² *LEC Price Cap Order*, paras. 230-232.

¹³ *LEC Price Cap Order* para. 293; 47 C.F.R. Section 1.773(a)(iv).

¹⁴ *CALLS Order*, para. 167.

excessive ILEC earnings attributable to large growth in minutes of use.¹⁵ This had nothing to do with productivity and as the Commission acknowledges “the same productivity factor was applied to all service baskets ...”¹⁶ Accordingly, the “g factor” is irrelevant to Petitioners’ argument that the targeting and use of productivity reductions for non-productivity purposes is arbitrary and unlawful. For the same reasons, and in addition to the fact that it has never been adopted, the “q factor” proposed in this proceeding that would share growth in common line minutes with IXC’s is irrelevant to Petitioners’ concerns about targeting of X-Factor reductions to local switching. To the extent the Commission views the “g and q factors” as related to productivity, this would merely prove Petitioners’ point that if the Commission wants to separately adjust the PCI’s for some baskets for productivity reasons it may do so after an appropriate rulemaking seeking to ascertain the appropriate productivity for each basket. However, as stated, this is not the case with the CALLS proposal which applies productivity reductions to specific baskets for purposes totally unrelated to productivity.

Nor does previous targeting of the X-Factor to the transport interconnection charge (“TIC”)¹⁷ justify the CALLS proposal. This use of X-Factor reductions for non-productivity purposes has not been specifically judicially approved. Moreover, targeting of X-Factor reductions to the TIC is very different from CALLS’ targeting. The targeting of the X-Factor to the TIC does not involve an arbitrary selection of X-Factors scattered throughout the price cap

¹⁵ *LEC Price Cap Order*, para. 5.

¹⁶ *Id.*

¹⁷ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982, 16072-16086 (1997) (“*Access Reform Order*”).

scheme. Instead, other baskets and charges governed by price caps receive no X-Factor reductions until the TIC is eliminated. Thus, targeting of the X-Factor to the TIC merely defers X-Factor reductions for other rate elements and baskets until the TIC is phased out. Therefore, previous targeting to the TIC preserved the uniform application of X-Factor reductions across the facilities-based price cap baskets, whereas the CALLS proposal cuts significant new ground in this area by radically applying different productivity reductions to different baskets and, moreover, X-Factors that change over the life of the CALLS plan. Indeed, if someone wanted to design a use of the X-Factor that is glaringly arbitrary in adjusting rates in ways that have nothing to do with what the X-Factor is, the CALLS plan would be hard to beat.

There was also a significantly stronger policy justification for TIC targeting. Precisely because the TIC is a non-cost-based charge that was created primarily to preserve ILEC revenues after the termination of the equal charge per unit of traffic rule under the *Modified Final Judgment*, it does not involve the potential economic distortions of arbitrary application of X-Factors to other price cap baskets and services.¹⁸ The Commission recognized that “the TIC adversely affects the development of competition in the interstate access market.”¹⁹ And, the Commission was seeking to eliminate the TIC in order to establish a rate structure for interstate

¹⁸ *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). The Modified Final Judgment established an interim rule that required, until September 1, 1991, BOC charges to IXCs to be “equal, per unit of traffic” of a given type transported between end offices and facilities of the IXCs within an exchange area or within reasonable subzones of an exchange area. 552 F. Supp. 233-34. The Commission replaced the “equal charge” rule in 1993 with an interim rate structure for tandem switched transport that included in part the TIC. The TIC was explicitly intended to make the transition to the interim rate structure revenue neutral for the BOCs.

¹⁹ *Access Reform Order* at 16073.

access based on cost causation principles as directed in *Comptel*.²⁰ Thus this targeting was viewed as necessary to remove an otherwise objectionable non-cost-based charge that thwarted the development of competition in the interstate access market and to meet the mandate of *Comptel*. CALLS targeting of X-Factor reductions to switching cannot be justified on this basis. Rather, the current rate structures, while perhaps imperfect in certain respects, reflect the rate structure improvements made by the Commission in the *Access Reform Order* that help assure that the rate structures for interstate access charges are more in line with the way that costs are incurred.²¹ It is not necessary to target X-Factor reductions to local switching in order to phase out a non-cost-based rate structure.

The CALLS proposal could only rationally be applied based on some economic showing that the proposed productivity reductions reflect the productivity of the services to which they are applied. Accordingly, TIC targeting does not justify, or provide precedent for, the CALLS proposal.

D. Price Cap ILECs Ability to Apply X-Factor Reductions to Any Traffic Sensitive Rate Elements Is Also Arbitrary and Would Grant Premature Pricing Flexibility

Focal pointed out in comments concerning the CALLS proposal that ILECs' ability to apply X-Factor reductions in any way they choose to different rate elements in traffic sensitive baskets as long as the average target price is achieved would grant premature pricing flexibility

²⁰ *Competitive Telecommunications Ass'n v. FCC*, 87 F.3d 522 (D.C. Cir. 1996)(“*Comptel*”).

²¹ In the *Access Reform Order*, the Commission reformed “the current rate structure [of interstate access charges] to bring it into line with cost-causation principles ..” *Access Reform Order*, 15998, para 35.

for switched access by an impermissible means.²² The *CALLS Order* did not address this concern.

Petitioners reiterate that while the Commission has removed price cap lower pricing band limits, it has not permitted ILECs to use X-Factor reductions as a discretionary tool to price services in ways that will best meet competition. This also is a radical new feature introduced into price cap regulation that the Commission and CALLS proponents have totally failed to justify. The Commission has hereto granted ILECs the ability to respond to competition only after the careful evaluation of a complete record, and on the basis of a competitive showing.²³ The Commission is currently examining whether it should establish pricing flexibility for switched services.²⁴ Any pricing flexibility for these services should be established, if at all, on the basis of the Commission's separate pending pricing flexibility proposals, not by permitting ILECs to apply the X-Factor to individual rate elements at ILECs' discretion irrespective of productivity. As discussed below, the fact that ILECs may under price cap voluntarily file tariffs to reduce switching rates, does not justify rule changes that arbitrarily apply X-Factor reductions to various baskets, and that give ILECs discretion to apply X-Factor reductions, irrespective of productivity.

E. The Commission Did Not Adequately Evaluate the Purported Benefits of Targeting

²² "Carriers, however, may take these reductions against any of the average traffic sensitive charge rate elements, provided that they still generate the same amount of reductions." CALLS Memorandum, p. 12.

²³ *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, ("Pricing Flexibility Order").

²⁴ *Id.*

The only benefit that the Commission cites for the proposed targeting of X-Factor reductions to switching is that this will reduce local switching rates towards cost.²⁵ This does not provide a sufficient basis for the proposed targeting because it does not provide a comprehensive comparative evaluation of other targeting options. Assuming that the Commission and/or ILECs have virtually unfettered discretion to roam across the price cap landscape and apply productivity reductions anywhere regardless of productivity, which is incorrect, the Commission must consider whether other targeting alternatives would not better achieve public interest or access reform objectives. In this connection, why not target X-Factor reductions to reduce the SLC? This would have a direct impact on consumers and avoid headaches of trying to ascertain whether IXC's are passing through switching reductions to consumers. Why not target X-Factor reductions to universal service contributions so that these programs are funded by increases in ILEC productivity? Arguably, this would far better promote the universal service provisions of the Act than the self-serving arbitrary universal service plan proposed by CALLS which seeks primarily to insulate a substantial portion of ILEC revenues from competition. Absent this sort of comprehensive evaluation, there is no basis for concluding that the proposed targeting is a rational method of promoting the Commission's objectives.

The *CALLS Order* does make one comparative evaluation in attempting to justify the proposed targeting to switching. The Commission notes that since the time that ILEC price cap regulation was established rates-of-return for price cap baskets have diverged from approximately equal to higher rates-of-return for switching in comparison to other baskets.²⁶

²⁵ *CALLS Order* para 167.

²⁶ *CALLS Order* para. 72.

This does not provide a comprehensive evaluation of a reasonable range of targeting alternatives that would be necessary to support the Commission's choice. Insofar as X-Factor reductions can be applied anywhere in price caps, the Commission must consider the full range of options in order to reach a fully supported decision. Of course, if the Commission wants to reduce switching because of a high rate-of-return for that basket, it must do so through a proceeding directly looking toward that result, not by application of a reduction that estimates productivity instead of earnings.

III. THE COMMISSION DID NOT ADEQUATELY ADDRESS THE ADVERSE COMPETITIVE IMPACT OF SWITCHING REDUCTIONS

In the *CALLS Order*, the Commission acknowledged Petitioners' concern that the CALLS proposal would permit ILECs to target rate reductions to traffic-sensitive rates, which are subject to competition, while revenues in the less competitive common line basket are maintained.²⁷ Petitioners pointed out that the CALLS plan permits ILECs to use X-Factor reductions to fund competitive reductions in switching while preserving revenues elsewhere.²⁸ However, the Commission failed to adequately address these concerns.

First, the Commission merely repeated the allegation of Sprint that the marketplace was failing to adequately constrain CLEC access charges.²⁹ Petitioners object in the strongest possible terms to use of an allegation by Sprint concerning this issue, without any finding by the Commission, to address Petitioners' concerns that the CALLS proposal is a vehicle for ILECs to anticompetitively shift productivity reductions from common line to switching in order to harm

²⁷ *CALLS Order* para. 169.

²⁸ Focal Comments, filed April 3, 2000, p. 14.

²⁹ *CALLS Order* para. 169.

CLECs and preserve revenues. The Commission has made no finding that CLEC interstate access charges are excessive, or that there has been any market failure to constrain them. In fact, the Commission has specifically held that CLECs lack market power in provision of interstate access services,³⁰ and Petitioners have submitted extensive information in the record of this proceeding showing that CLEC access charges, when properly compared, are roughly equivalent to ILEC interstate access charges.³¹ Moreover, any issue concerning the level of CLEC interstate access charges is completely irrelevant to whether ILECs under the CALLS proposal are improperly seeking to convert the X-Factor into a tool to fund rate reductions in competitive areas while preserving revenues elsewhere. Accordingly, the Commission's casual reference to Sprint's point-of-view concerning CLEC interstate access charges does not in any way or to any extent address Petitioners' arguments concerning the anticompetitive impact of the CALLS proposal.

The Commission also attempts to address Petitioner's concerns by stating that the switching rates that will result from the X-Factor targeting are not predatory. In this connection, Petitioners strongly disagree with the Commission's assumption that the target rates are not predatory because ILECs propose to charge them for five years and that carriers are not likely to seek to charge prices that are below incremental cost for a sustained period. The Commission acknowledges that implementation of the CALLS plan will result in revenues to ILECs that are comparable to what would be achieved under current rules.³² This is consistent with, and

³⁰ *Access Reform Order* para. 360.

³¹ ALTS Comments, CC Docket No. 96-262, filed October 29, 1999.

³² *CALLS Order*, para 41.

verifies, Petitioners' point that ILECs are using the X-Factor to make anticompetitive reductions to switching while making up the revenues elsewhere including common line and an arbitrary new universal service fund. The fact that price cap ILECs would make the reductions for five years does not show that switching rates are not predatory because, as the Commission acknowledges, the plan is essentially revenue neutral, or more likely will enhance revenues, for price cap ILECs. Price cap ILECs could therefore sustain the proposed target switching rates indefinitely, even if they are below incremental cost. Accordingly, the fact that price cap ILECs will charge the target rates for five years does not show that they are not predatory.

The Commission also cites as evidence that target rates are not predatory a statement by Cable & Wireless that some interconnection agreements provide for rates for transport and termination of traffic that are less than the CALLS target rates for switching.³³ However, this does not provide probative evidence that the target rates are not predatory because transport and termination is not necessarily equivalent to access. Nor is there any reason to believe that the unspecified negotiated interconnection agreements cited by Cable & Wireless represent forward looking cost. Accordingly, this does not provide evidence that CALLS target rates are not predatory.

IV. THE COMMISSION HAS CONFUSED RULEMAKING STANDARDS WITH CARRIERS' ABILITY TO MAKE VOLUNTARY REDUCTIONS

As discussed, the *CALLS Order* assumes that the targeting of X-Factor reductions to switching is reasonable because the resulting rates are not predatory. Apart from the fact that the

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CALLS Order, para 170, citing Cable & Wireless Comments, p 4.

Commission has not shown that the target switching rates are not predatory, the predatory standard is the test that would apply if ILECs had chosen to file tariffs to voluntarily reduce switched access charges. If ILECs had chosen to file such tariffs, instead of submitting a rulemaking proposal, the Commission may have been able to conclude that these reductions were not predatory based on cost studies or some other basis and allowed the tariffs to take effect.

However, in order to amend the price cap rules, the Commission must do more to justify new rules than state that the proposed reductions are not predatory. The Commission must explain that the proposed price cap rule changes are consistent with the price cap regulatory scheme and not arbitrary and capricious. As discussed, adoption of the CALLS targeting proposal primarily because CALLS has proposed it and because it is not predatory does not make use of productivity reductions for a different purpose rational under the price cap scheme. Accordingly, the fact that some aspects of the CALLS plan might make sense as voluntary carrier filings, with the appropriate showing, does not necessarily provide a basis for amending the price cap rules.

V. THE UNIVERSAL SERVICE FUND IS ARBITRARY

Focal in its comments pointed out that the CALLS proposal to establish a new \$650 million universal service fund for the purpose of replacing interstate access service revenues that allegedly support universal service was arbitrary in that there was no reason to believe that the size of this fund accurately reflected “support that currently is implicit in interstate access charges.”³⁴ Indeed, the size of this fund was suspect because it would insulate a significant portion of ILEC revenues from competition.

³⁴ CALLS Memorandum, p. 3.

In the *CALLS Order*, the Commission provides inadequate support for the selection of this size of this new universal service fund. In essence, the Commission's justification consists only of the fact that this figure falls somewhere within the range of competing estimates in the record of the amount of implicit support contained in access charges.³⁵ Petitioners submit that the mere fact that parties have made divergent estimates of an appropriate amount of universal support does not provide any basis for selecting a specific size of an appropriate fund. In reality, the Commission had no basis for selecting \$650 million for the size of this fund. Further, insofar as the Commission was going to select a fund based on divergent estimates it would have been more appropriate to select the size proposed by ALTS - \$300 million - because this would have been more consistent with a market-based approach to access reform because it would have insulated a lesser amount of ILEC revenues from competition.

As pointed out by Focal, the Commission should determine the amount of implicit support in access charges by a method, such as use of models, that provides some assurance that the estimate is accurate.³⁶ The Commission has recognized that for purposes of administering a high cost support system based on forward looking cost, a model would be an essential part of determining support levels in an efficient way.³⁷ Cost studies could also be used. The *CALLS*

³⁵ *CALLS Order* para 202.

³⁶ Focal Comments, filed April 3, 2000, p. 16.

³⁷ *Federal-State Joint Board on Universal Service Service*, Report and Order, 12 FCC Rcd 8776 (1997)(*"Universal Service Order"*), as corrected by *Federal-State Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157, rel June 4, 1997); *Federal-State Board on Universal Service*, Fifth Report and Order, 13 FCC Rcd 21323, 21327, para 9 (1998)(*"Platform Order"*). See also *Federal-State Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306 (rel. November 2, 1999)(methodology order); *Federal-State Board on Universal Service*, Tenth Report and Order, CC Docket No. 96-45, FCC 99-304 (rel. November 2, 1999)(inputs order).

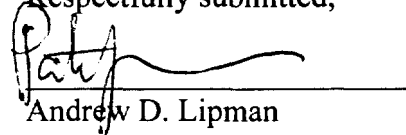
Order fails to explain why it did not employ these alternatives, particularly since the Commission already has developed universal service models and since the Commission has determined to use cost studies to set access charges for ILECs that do not opt into the CALLS plan.

VI. CONCLUSION

For these reasons, the Commission on reconsideration should rescind its approval of the CALLS plan, and direct price cap ILECs to reestablish rates that would be in effect under previous rules. Alternatively, the Commission should require price cap ILECs to establish rates based on a modified CALLS plan that avoids the unlawful aspects of the current plan as discussed herein.

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Dated: July 21, 2000

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I Candise M. Pharr do hereby certify that on this 21st day of July, 2000 the foregoing Petition for Reconsideration of The Association for Local Telecommunications Services and Focal Communications Corporation were delivered by hand and first class mail to the following:


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